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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 332

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S BRIEF IN REPLY

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October 12, 1949.

INDEX

PAGE

Statement 1

Argument 3

A. The Running of the Statute of Limitations Was Suspended During the Period of the War and Enemy Occupation 3

B. Petitioner's Claim Is Not Barred by the Provision of Section 156, Outlawing Suits Not Commenced within Three Years After Disability Ceased 9

Conclusion 12

TABLE OF CASES

Adger v. *Alston*, 15 Wall. 555 (U. S. 1872) 7, 8

Amy v. *Watertown* (*No. 2*), 130 U. S. 320 (1889) ... 3, 4

Batesville Institute v. *Kauffman*, 18 Wall. 151 (U. S. 1873) 7, 8

Braun v. *Sauerwein*, 10 Wall. 218 (U. S. 1869) 2, 9

Fleischmann Co. v. *United States*, 270 U. S. 349 (1926) 6

Hanger v. *Abbott*, 6 Wall. 532 (U. S. 1867) 9

Holy Trinity Church v. *United States*, 143 U. S. 457 (1892) 4, 5

Kendall v. *United States*, 107 U. S. 123 (1882) 6

Markham v. *Cabell*, 326 U. S. 404 (1945) 4, 5

McIver v. *Ragan*, 2 Wheat. 25 (U. S. 1816) 9

PAGE

Osbourne v. *United States*, 164 F. 2d 767 (C. C. A. 2d, 1947) 7, 8
Ozawa v. *United States*, 260 U. S. 178 (1922) 6
Ross v. *Jones*, 22 Wall. 576 (U. S. 1875) 7, 8
Stewart v. *Kahn*, 11 Wall. 493 (U. S. 1870) 9
United States v. *American Trucking Associations, Inc.*, 310 U. S. 534 (1940) 5
United States v. *Katz*, 271 U. S. 354 (1926) 6
United States v. *Wiley*, 11 Wall. 508 (U. S. 1870) ..6, 8, 9

IN THE

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STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES OF AMERICA,
Respondent.

No. 532

PETITIONER'S BRIEF IN REPLY

Statement

In our original brief we argued that, in construing Federal limitations statutes, the Federal Courts, and in particular this Court, have so construed their provisions as to allow to the aggrieved party a reasonable time within which to commence suit. We said that such construction rested upon two basic foundations. The first is the intent of Congress; that legislative body, having granted a remedy to your petitioner pursuant to Constitutional mandate, will not be presumed to have intended to take away that remedy by a statute of limitations with the terms of which it could not have complied. The second is historical, and relates to the principles under which statutes of limitations have developed, and under which their constitutionality has been sustained in the face of contentions that they unlawfully destroyed or abridged contract and property rights. In that

connection we pointed to authorities declaring that statutes of limitations which destroy or unreasonably abridge a claimant's time within which to bring suit violate Constitutional principles. We pointed out that those authorities and the Constitutional principles which they enunciate are peculiarly applicable when the claim sought to be barred by the statute is not merely based upon the common law, but is directly founded upon the Constitutional right to compensation for property taken for a public use. Finally, we pointed to a number of situations in which unexpressed exceptions have been read into limitations statutes by the courts. All of them, we said, involve the same basic principle—that a claimant is entitled to a reasonable opportunity to invoke his remedy. One of those situations, involving the exception arising out of war, is the one now before the Court. It is not an independent exception, unrelated to the general law, but is simply an application of the general principle which we have stated.

The Government, in its brief in answer, has left unanswered most of our argument, including all of the basic principles upon which that argument rests. It has attempted to treat this Court's decisions respecting the effect of war upon the statute as *sui generis*, although clearly the decisions themselves (as, see *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1869) do not do so. It contends that the reading of any judicial exception into this statute of limitations is precluded by its clear and unambiguous language. It contends, also, that all the cases in which the statute was held suspended by war rest upon a disability arising out of law and not facts; that the plaintiff was forbidden by law to sue, not that he was prevented from doing so by facts beyond his control. It contends, in addition, that in all

cases in which the statute was so suspended, the plaintiff was denied access to the courts. It contends, finally, that if the statute was suspended, such suspension cannot exceed "three years after the disability has ceased" (that being the provision of the statute with respect to the disabilities for which it makes express provision), that the disability involved in this case ended on February 27, 1945, when civil administration was restored to the Philippines, and that action upon the claims here involved was not commenced within that time. Finally, it suggests (footnote, page 32) that if the judgment is reversed, the cause should be remanded with directions that your petitioner amend its pleadings to allege the facts stated in our main brief with respect to petitioner's inability to sue, and that the issues so raised be separately tried. Although the desirability of a separate trial of such issues may depend upon factors of convenience to be passed upon by the trial court, we have no objection, if this Court deems it proper, to a direction that the facts upon which petitioner relies be pleaded either by amendment to the petition or by a reply to an answer which shall plead the limitations defense.

Argument

A.

THE RUNNING OF THE STATUTE OF LIMITATIONS WAS SUSPENDED DURING THE PERIOD OF WAR AND ENEMY OCCUPATION.

We concede "the general rule" to be "that the language of the act must prevail * * *." (*Amy* v. *Watertown* (*No. 2*), 130 U. S. 320, 324 (1889); Gov't. Br., p. 11.) But the existence of the "general rule" does not prove the absence

of exceptions to it, as that decision itself recognizes. "Concealment of fraud prevents a party from knowing that he has been injured and has a cause of action. He cannot take any steps to obtain redress. * * * There [also] is one class of cases which is excluded from the operation of the statute by act of law itself * * *. This class embraces those cases in which no action can be brought at all, either for want of parties capable of suing, or because the law prohibits the bringing of an action. In such cases the general law operates as a qualification, or tacit condition of the particular statute. * * * So where a citizen of one country has a cause of action against a person who resides in another country at war with his own, the law of nations forbids any intercourse between them, and suspends all suits and actions by the one against the other; and, therefore, the time during which the right to sue is thus suspended, is not reckoned as any part of the time given by the statute of limitations for bringing an action." (*Amy* v. *Watertown* (*No. 2*), at pp. 325-26; insert in brackets ours.) That decision manifestly does not support the Government's contention that war will not toll the statute.

This Court has held repeatedly that situations of unusual hardship, of such character as to indicate that they were not within the contemplation of Congress in enacting legislation, will be excluded from its operation by judicial exception. So in *Markham* v. *Cabell*, 326 U. S. 404 (1945), it restricted the application of section 9(e) of the Trading with the Enemy Act to claims arising out of the first world war, saying (p. 409): "The policy as well as the letter of the law is a guide to decision. Resort to the policy of the law may be had to ameliorate its seeming harshness or to qualify its apparent absolutes as *Holy Trinity Church*

. *United States*, 143 U. S. 457, illustrates." In that case ection 9(e), if applied, would have outlawed plaintiff's nly remedy. Similarly, in *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 543 (1940), he Court said:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words."

here the Court limited the normal meaning of the word employee" in section 204 of the Motor Carrier Act, in rder to give the section a meaning consonant with the gen ral policy of Congress, as disclosed in other legislation.

In *Holy Trinity Church* v. *United States*, 143 U. S. 457 1892), which was cited as controlling in *Markham* v. *Cabell, supra*, the Court read an exception into a statute orbidding the importation of alien labor into the United States under contract to perform labor there, in favor of an English clergyman brought into the United States to act s rector of the plaintiff in error. The decision cites umerous situations in which unexpressed excep ons have

been read into statutes. The Court said concerning them (p. 459):

> "* * * It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act. * * *"

There are many decisions of like effect; as, see *Ozawa* v. *United States*, 260 U. S. 178 (1922); *Fleischmann Co.* v. *United States*, 270 U. S. 349 (1926); *United States* v. *Katz*, 271 U. S. 354 (1926).

The Government's contention that in all the cases in which unexpressed exceptions arising out of war were read into limitations statutes, the basis of the exception was a *legal* rather than a *factual* disability to sue, is squarely contrary to this Court's decision in *United States* v. *Wiley*, 11 Wall. 508 (U. S. 1870), which is cited and quoted at length at pages 24 and 25 of our first brief. That case, squarely in point upon this contention, the Government's brief elects to ignore. The argument is inconsistent, also, with *Kendall* v. *United States*, 107 U. S. 123 (1882). There the plaintiff was a citizen of the Confederacy, who originally

was prevented by statute from bringing suit, and who brought his action well within the period of limitation after the lifting of the disability. The Court remarked (p. 126) that the United States "was in no wise responsible" for the plaintiff's inability to bring suit at an earlier date, and ruled that the action was barred. Finally, the argument is at variance in principle with the Court's holding in *Adger* v. *Alston,* 15 Wall. 555 (U. S. 1872), *Batesville Institute* v. *Kauffman,* 18 Wall. 151 (U. S. 1873, and *Ross* v. *Jones,* 22 Wall. 576 (U. S. 1875), in all of which state limitations statutes were held suspended though both parties to the actions resided within the Confederacy. There was no showing that the courts of the southern states whose limitations legislation was invoked had been closed to those parties, or to such litigation, by any statute or rule of common law, either state or federal; the disability was not legal.

Similarly, the Government's contention that statutes of limitation are suspended by war only when plaintiffs are denied access to the courts is not borne out by the decisions, and is at variance with sound principle. That was not the situation presented in *Osbourne* v. *United States,* 164 F. 2d 767 (C. C. A. 2d, 1947). In that case the plaintiff was not denied access to the courts of the United States, but was physically prevented from bringing suit therein by his internment by the Japanese. Similarly, in *Adger* v. *Alston, Batesville Institute* v. *Kauffman* and *Ross* v. *Jones,* to which we refer in the preceding paragraph, the courts of the Confederacy were not closed to the parties. It is, of course, true that, for various periods, the trial of cases and the hearing of appeals was suspended in most or all of the Confederate States during the Civil War. But

that fact alone did not prevent the timely commencement of actions in those courts.*

In summary, the substance of the Government's argument is that the statute of limitations was not tolled in favor of your petitioner, because: "the courts of the United States were open during the time in question, and petitioner had standing to sue". (Gov't. Brief, pp. 26-27). But that was the case also in *United States* v. *Wiley*, 11 Wall. 508 (U. S. 1870), and in *Osbourne* v. *United States*, 164 F. 2d 767 (C. C. A. 2d). In *Adger* v. *Alston*, *Batesville Institute* v. *Kauffman* and *Ross* v. *Jones* (all *supra*) the parties were Confederates, the courts of the Confederacy were not closed to them by any law and they also had standing to sue in those courts. The Government's attempt to distinguish this case upon that basis is without merit.

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*The Government, in footnote 13 on page 27 of its brief, cites authorities holding that as between citizens of the Confederate states, the statute of limitations was not suspended by the Civil War. All of them, apparently, rest upon the fact that the courts of the Confederacy remained available to the parties. Thus in *Lockhart* v. *Horn*, Fed. Cas. No. 8445 (affirmed on other points, 17 Wall. 570), Judge Bradley pointed out (p. 753) that: "It is a fact that the Courts of Alabama were open to all citizens of the Confederate States, and there was no law to prevent their resorting thereto." And in *Cross* v. *Sabin*, 13 Fed. 308, 313 (C. C. Tennessee, 1882), the court pointed out:

> "* * * We know that the courts of Washington county were not regularly held at the times designated by law, but all the machinery provided for the issuance and service of process existed; and, although suits then brought could not have been tried until after the cessation of hostilities, there was no obstacle in the way of commencing them prior to August, 1863, at which time Mathes had held for more than seven years; and upon these facts, we think, the statute of limitations was not suspended as between the parties to this suit."

Clearly *McIver* v. *Ragan*, 2 Wheat. 25 (U. S. 1816), which the Government has briefed at length (pp. 25-29), does not support its argument. There, the plaintiff's only "disability" consisted of his alleged lack of power to obtain a survey of the land in suit, because one corner (containing the point at which the survey began) lay within forbidden Indian territory. But as Chief Justice Marshall pointed out, that fact did not prevent the plaintiff from *commencing* his action. In the case at bar, your petitioner's lack of knowledge that its property had been requisitioned did prevent it from commencing its action. Unlike the *McIver* case, "The difficulty under which the plaintiff[s] labored, respected * * * the institution of their suit", and not its trial.

B.

PETITIONER'S CLAIM IS NOT BARRED BY THE PROVISION OF SECTION 156, OUTLAWING SUITS NOT COMMENCED WITHIN THREE YEARS AFTER DISABILITY CEASED.

The decisions of this Court hold, without exception, that statutes of limitations do not run during periods of disability arising out of war, and that claimants may not be deprived of the full period of time within which statutes provide that they may sue: *Braun* v. *Sauerwein*, 10 Wall. 218, 222-23 (U. S. 1869); *Stewart* v. *Kahn*, 11 Wall. 493, 503 (U. S. 1870); *United States* v. *Wiley*, 11 Wall. 508, 513-14 (U. S. 1870); *Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1867). The Government contends that this rule, so long and so repeatedly declared, should now be abandoned out of deference to the statute, which makes a different provision respecting suits by persons formerly under disability by

reason of marriage, infancy, idiocy, insanity or absence beyond the seas. If the effect of those disabilities upon the power to bring suit promptly were either similar or comparable to the effect of a disability arising out of war, the contention might have some force. It is clear, however, that there is no such similarity. The effects of the Japanese War present far greater obstacles to the discovery and prosecution of claims than arise out of infancy, coverture, absence from the country or the other disabilities named in the statute. It is also a fact that the war itself has not yet been declared at an end—a fact whose theoretical and practical bearing upon the question should not be overlooked.

But even if the Government's major premise were accepted, its conclusion would not follow. We may assume, by analogy to the statute, that claims should be barred three years after the war's termination. Such termination may mean the declaration, by the President or by Congress, that the war is ended. There has been no such declaration. Or it may mean the termination of actual hostilities. The Government makes no claim that hostilities had ceased on February 27, 1945, when civil administration was declared restored to the Philippines; it concedes that (Gov't. Br., p. 30): "Not all of the Philippines were liberated by February of 1945 * * *."* In point of fact it was many months before peace and order were restored, and before your petitioner was placed in a position to ascertain that its properties had been requisitioned. There is no contention that in February, 1945, peace and civil administration had actually been restored at San Fernando, La Union, or at La Paz,

*The claims here involved were filed in the court below on March 24, 1948, less than three years and one month after that date; see Gov't. Brief, p. 30.

Iloilo City, where the property involved in the Seventh and Fifteenth claims was situated (R. 15, 27). Under those circumstances, the mere issuance, at the center of the far-flung Philippine territory, of a declaration of restoration of civil administration, has no bearing upon your petitioner's actual situation, nor significance under the authorities respecting the effect of war, which we have cited.

We have difficulty in following the respondent's argument that, because civil administration was declared restored in February, 1945, your "petitioner was no longer *completely* denied access to information" (Gov't. Br., p. 30) concerning claims which had arisen in territories which may not then have been liberated. Nor is it apparent to us why the fact that your petitioner seasonably filed claims covering properties requisitioned in some areas of the Philippines indicates that it must have known, or should have known, of the existence of other claims for the taking of other properties in other areas, perhaps then unliberated.* Certainly the fact that such unfiled claims were not "different in character"—though possibly originating in distant or non-liberated areas—does not support the Government's charge that failure to obtain data concerning them "can be ascribed, therefore, only to the oversight or laches of

*Petitioner's amended petition filed on March 24, 1948, and further amended on June 1, 1948, for the sole purpose of correcting certain typographical errors appearing therein, indicates that not any claim was made to the United States Army Claims Service in respect of petitioner's San Fernando and La Paz installations. The fact is, however, that in late April of 1948, petitioner filed with the United States Army Claims Service a claim in respect of petroleum products requisitioned by USAFFE at its San Fernando installation. That claim was thereafter paid by the Army Claims Service, even though it had been filed more than six years after the requisition thereof.

petitioner" (Gov't. Br., pp. 30, 31). Nor can we ascribe great weight to the argument that the Government, which must know whether it took these properties, was entitled to notice from a party having no such knowledge, "before the deficiency of proofs arising from [these] ancient transactions is made irreparable" (Gov't. Br., p. 31). It seems that the mere statement of such contentions is sufficient to refute them.

CONCLUSION

It is respectfully submitted that, for the reasons stated in this and in our original brief, the judgment of the Court of Claims of the United States dismissing as barred by the statute of limitations parts of the Seventh and Fifteenth Claims stated in your petitioner's second amended petition is wrong and should be reversed.

Respectfully submitted,

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